

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Eduardo Benavides, # 89008-132	)	C/A No.: 2:09-2468-JFA-RSC
	)	
Plaintiff,	)	
v.	)	<b>ORDER</b>
	)	
Mary Mitchell, Warden; Harley Lappin,	)	
Director for Bureau of Prisons,	)	
	)	
Defendants.	)	
_____	)	

The *pro se* plaintiff, Eduardo Benavides, is currently incarcerated at the Federal Correctional Institute in Edgefield, South Carolina. Although the plaintiff purportedly brought this action pursuant to 28 U.S.C. § 2241, his claims raise matters pertaining to his conditions of confinement relating to his state criminal case in Texas. Therefore, the Clerk of Court reclassified this action as one pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), which is analogous to a claim brought against state officials under 42 U.S.C. § 1983.

The Magistrate Judge assigned to this action<sup>1</sup> directed the plaintiff to submit an amended petition. The Clerk has filed the plaintiff's amended petition under Civil Action 2:09-2798-JFA-RSC as a petition under 28 U.S.C. § 2241.

The Magistrate Judge has prepared a Report and Recommendation wherein he

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). See 28 U.S.C. § 636(b)(1).

suggests the instant case be dismissed without prejudice since the plaintiff has indicated that he will not proceed with this case as a civil rights action, nor has he submitted the required USM-285 forms and summons. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on October 22, 2009. In his timely objections, the plaintiff objects to his denial of copies and his motion for preliminary injunction. He also informs the court that he has filed a separate civil rights complaint in this district, Civil Action No. 2:09-2996-JFA-RSC, and that he has file another suit in Washington, D.C.


The plaintiff's main objection and concern is that the Bureau of Prisons will destroy recorded telephone conversations that are important for his appeal. As the plaintiff already has pending a civil rights action and a habeas action, the undersigned will deny the motion without prejudice and with leave to refile in the appropriate case.

After carefully reviewing the applicable law, the record in this case, the Report and Recommendation, and the plaintiff's objections thereto, the court finds the Magistrate Judge's recommendation is proper. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates this Report by specific reference.

Accordingly, this action is dismissed *without prejudice*.

IT IS SO ORDERED.

November 24, 2009  
Columbia, South Carolina

  
Joseph F. Anderson, Jr.  
United States District Judge